

**UNITED STATES OF AMERICA**

**VS.**

**ELLIOT HALBERSTAM**

**15 CR 825 (ALC)**

**Defense Sentencing Memorandum**

AUSA Andrew D. Beaty  
One Saint Andrew's Plaza  
New York, New York 10007  
Andrew.beaty@usdoj.gov

Christopher F. Paragano  
U.S. Probation Officer  
Christopher\_Paragano@nysp.uscourts.gov

THE LAW OFFICES OF

# Richman Hill & Associates PLLC



2027 Williamsbridge Road, Bronx, NY 10461

718.892.8588 | fax: 718.518.0674

Stacey Richman, Esq.

srichmanlaw@msn.com

Renée C. Hill, Esq.

rhill.esq@msn.com

February 21, 2019

Andrew L. Carter, Jr.  
United States District Court  
Southern District of New York  
40 Foley Square  
New York, New York 10007  
ALCarterNYSDChambers@nysd.uscourts.gov

Re: United States v. Elliot Halberstam  
15 Cr. 825 (ALC)  
Defense Sentencing Memorandum and Support

Sentencing Date: February 28, 2018, 12:00 p.m.

Your Honor:

This is the most unique case in this arena I have encountered. This Court is patient in its review at all sentencing proceedings, this matter however requires a searching for justice that is not just the for present but reaches back generationally.

Please receive this memorandum in anticipation of sentencing. It is out of the norm for me not to provide my defense papers well in advance. However, the letters of recommendation, my concern over aspects of the final PSR and my impressions of the McCarthy report required additional time. I have attached my writings to the Government of November 15, 2017 and May 22, 2018 which provide insight into the negotiations in this matter; and, informed as to the history of Mr. Halberstam, his family, the impact of the Holocaust and perceived obligation to religion which have served to be the root of how this matter evolved.<sup>1</sup> It is, as well, a reflection of the impact of intolerance and oppression, which seeded the psychiatric field for this crime to have occurred. Mr. Halberstam is an orthodox religious man, from a historically religious family who chose to live on the expected "correct" path of life.

For so long and, still within our society, homosexuality is not accepted. "A man who lies with a man as one lies with a woman, they have both done an abomination, they shall be put to death, their blood is upon themselves." Leviticus 18:22; this is part of the weekly Torah portion (parashah) called Acharei Mot which comprises Leviticus 16:1-18:30. Mr. Halberstam is a homosexual person.

---

<sup>1</sup> It is the November 15, 2017 submission, which is the center of this memorandum. The November 15, 2017 is included as an attachment for the perspective of the discussions the Government and the defense have had throughout this matter.

Mr. Halberstam worked diligently, as you will read, to follow the advice of rabbis and religious teachers to pray away his natural orientation. He sought to do everything expected of him. The history of this individual and the status of communities still unaccepting of the variance of what human sexuality can be is the root of this awful crime. Mr. Halberstam takes full responsibility for his actions and he should have, pulled himself away before any inappropriate action; he did not, he could not. As incongruous as it may sound he was in love with the victim.

Mr. Halberstam was, it would seem, in the throws of a personality divide which stunningly did not originate from a place of predation or a desire to abuse but one in which he saw himself as the complainant – at the same crossroad in life and had wanted the complainant to understand he had choice. Mr. Halberstam until these events had chosen to stay the course expected; he led a life in which a core aspect of his humanity was suppressed. The initial place from which the chaos and criminality sprung was one of hope for a better future for the complainant.<sup>2</sup>

Please note that in 2017 Dr. Richard B. Krueger, M.D. the Medical Director of the Sexual Behavior Clinic of the New York State Psychiatric Institute and Columbia University performed a psycho-sexual evaluation of Mr. Halberstam.<sup>3</sup> Dr. Kreuger's report<sup>4</sup> and curriculum vitae are attached for your review and his findings will be summarized infra. Dr. Kreuger interviewed Mr. Halberstam in the same manner and using the same testing as Dr. McCarthy, the doctor contracted by U.S. Probation. Dr. Kreuger, however also joined counsel in reviewing certain evidence with Agent Spivak at the FBI offices and reviewed the email exchanges. Dr. Kreuger found that Mr. Halberstam is not a pedophile nor does he have any other paraphilic disorder. See Exhibit 1, Kreuger Report at page 15.

Dr. Kreuger assessed Mr. Halberstam's risk of committing another sexual crime is low according to five instruments used to assess this particular risk. "Mr. Halberstam has an excellent work history and no major psychiatric or substance use disorders, which decreases his risk. Additionally, Mr. Halberstam has or will lose his social work license as a result of this crime and will be barred from engaging in such work going forward, which will additionally reduce his risk."

Mr. Halberstam is extremely charged by his arrest, acknowledges that wrongfulness of what he has done, and is highly motivated to engage in sex

---

<sup>2</sup> Due to the nature of this matter the victim's name is never used.

<sup>3</sup> Dr. Krueger's report and curriculum vitae were provided to the Government in November, 2017, the report was provided to U.S. Probation in anticipation of the initial release of the PSR. In the initial objections it was request that the Kreuger report also be provided to the Court at that juncture.

<sup>4</sup> As Dr. Kreuger's report does mention the victim's name it is not filed on ECF; it is only provided in hard copy and email directly to the Court. It was previously provided to the Government and Probation.

offender specific treatment. Should he continue in and complete behavioral treatment, his risk of re-offense would be remote, in my judgment." See, Exhibit 1, Kreuger Report at page 14.

That Mr. Halberstam is eager to engage in therapy and has fully accepted responsibility is positive from both the clinical and penological perspectives. Both doctors agree that any conditions of release should include therapy. Dr. Kreuger notes and provides support that "neither incarceration per se, nor the length of incarceration is associated with a decreased rate of recidivism in sex offenders (See, Exhibit 1, Kreuger Report, page 15 and Exhibit 1(a) "Incarceration And Recidivism Among Sexual Offenders, by Kevin Nunes et. al., Law Human Behavior, 31 (3), 305-318, (2007)).

This matter does not end with the sentence of this Court. Due to the New York State Sexual Offender Registration Act (SORA) found at NYS Correction Law Article 6-C; at the conclusion of Mr. Halberstam's incarceration there will be New York State proceedings determining his risk level. He will be rated a level at least a level two based upon the facts of this matter. He will have severe strictures imposed, which will be for the rest of his life. See, NY Corrections Law §168-h(2). The requirements include limitations on where he may live, community and job notification and certain restrictions akin to those which will be imposed by the special conditions as part of this sentence. The requirements of NYS SORA registration also portend the possibility of further felony prosecution for failure to re-register and provide updated current photographs. Do note that every two years a SORA registrant may apply for a step down in rating; however this will be up to the state court hearing the matter. Counsel did not want to be remiss in providing this information to the Court.

The objections to the initial PSR provided in counsel's letter of February 1, 2019, are provided as an attachment the objections to the final report are included infra as well.

History Of Elliot Halberstam:

The allegations are awful. Yet without understanding Mr. Halberstam and his history there can be no rendering of justice for the complainant, for society or for Mr. Halberstam himself.

Another fascinating aspect extant in this case and many sexual abuse cases I have worked through from the religious community is that there is a frightening correlation of abuse in the families of Holocaust survivors. The cruelties that have extended down from the maladaptations of the survivors, their inability to heal and have normal relations be it with a spouse or their own children is a significant factor.

Another significant factor again compounded by the Holocaust in the religious community is a sense of duty to the maintenance of the religious group and its traditions or “the Nazis won.”

The foremost factors however in this matter are Eliot’s lineage and the perception in the religious community that homosexuality is an abomination. The suppression of this natural aspect of life and the insularity of a community that believes that this orientation is wrong is a central tragedy, which has permitted the atmosphere for the evolution of this matter.<sup>5</sup>

Before any decisions are made as to the ultimate plea, counsel had insisted that the Government meet Eliot in person. Upon reading the detail of the complaint, reviewing the emails and the video that exists without the context of this human being you cannot properly consider how to achieve justice; or what is appropriate for a just resolution.

Elliot Halberstam is not a monster. He is not a predator. Despite every factor in this matter, there is an explanation for this storm. This is a very human story and it is reflective of the pain and suppression; of ostracism; and duty over generations of different aspects of oppression.

Please as well be keenly aware that Elliot is intensely contrite and continues on a course of emotional flagellation for his transgressions against the young man,<sup>6</sup> on many planes; the young man’s family, Elliot’s own children, as he is no longer present for them; his wife, for the physical and emotional affair; his parents and ancestry, for disappointing them; his religious community, for bringing and slander upon a community which always perceives it is not welcome; and to society for he does not accept the actions that he acknowledges.

///

///

---

<sup>5</sup> The NYS times has just this week published an article on the atrocity of being a homosexual in the ranks of the Catholic Church. The import of understanding throughout religious communities is clear concern on many human rights levels.  
[https://urldefense.proofpoint.com/v2/url?u=https-3A\\_\\_www.nytimes.com\\_2019\\_02\\_17\\_us\\_it-2Dis-2Dnot-2Da-2Dcloset-2Dit-2Dis-2Da-2Dcage-2Dgay-2Dcatholic-2Dpriests-2Dspeak-2Dout.html&d=DwIFaQ&c=G2MiLlal7SXE3PeSnG8W6\\_JBU6FcdVjSsBSbw6gcR0U&r=ART4xJ75bcVWXj2X0krKRjiP2kyDh4\\_A5yZhwNMaoy0&m=Gap7u2e1eQqdsTBgBzxOZs\\_rWshO53xv0aFPkLHVtug&s=sykpDOtZadUP-zHHXXk18ilxll9peqKPLrdjBKSIIMY&e=](https://urldefense.proofpoint.com/v2/url?u=https-3A__www.nytimes.com_2019_02_17_us_it-2Dis-2Dnot-2Da-2Dcloset-2Dit-2Dis-2Da-2Dcage-2Dgay-2Dcatholic-2Dpriests-2Dspeak-2Dout.html&d=DwIFaQ&c=G2MiLlal7SXE3PeSnG8W6_JBU6FcdVjSsBSbw6gcR0U&r=ART4xJ75bcVWXj2X0krKRjiP2kyDh4_A5yZhwNMaoy0&m=Gap7u2e1eQqdsTBgBzxOZs_rWshO53xv0aFPkLHVtug&s=sykpDOtZadUP-zHHXXk18ilxll9peqKPLrdjBKSIIMY&e=)

<sup>6</sup> Due to the nature of this matter, the victim’s name is never used.

### Elliot's Parents, Impact of the Holocaust and Lineage

Elliot is upon first impression a very sweet, mild mannered, extremely polite and intelligent fellow. He speaks with a British accent having been raised in the United Kingdom, by a British mother whose life was seasoned by war and the desire to marry. She married late, and was happy to marry a *Halberstam*. She thought by marrying into such a famous line all of her prayers were answered: she would have a husband, children, be recognized religiously and have the fairy tale that so many girls were once raised upon. Her life however was anything but a fairy tale.

The history of this family was forged during World War II. Surviving should have been a crucible of hope and new beginning. Survivors however are impacted by the experiences of war and so are their families. Elliot's father, Usher, was a survivor. The family evolved in the fallout of Usher's experience: chaos and emotional terror reigned in the Halberstam home.

In one of my first conversations with Elliot, I wanted to understand the stark disconnect between the man I met as I described him above; the charges and my investigation of those charges. He said: "My life is Hitler. My home growing up was a reflection of the war; everything in my life has been to please my father and insure that I did what the Rebbe said my duty was, I must carry on the lineage of my father."

You may say a lot of people are influenced by their parents, so what. Without understanding the history of this family historically and through the war, you cannot understand how this matter could have occurred.<sup>7</sup>

### Hasidic History (abbreviated) and the Halberstams

In Hasidism, your closeness in blood to a holy person is a reflection of not only your generational relation; but of your veneration by others and of your responsibility to Halachic or Jewish religious law.

Elliot is three relations from the Divrei Chaim, the founder of the Sanz Hasidic dynasty and close disciple of the Baal Shem Tov. The Baal Shem Tov was Rabbi Yisroel ben Eliezer, a Jewish mystical rabbi. He is considered the founder of Hasidic Judaism.

---

<sup>7</sup> The entire history of this family and the impact of a religious sense of duty is core to understanding the evolution of this matter and thus to coming to a just resolution. The history is detailed in each aspect informs us as to who Elliot is and how these events have come to pass. This is the only aspect of criminality in Elliot's life; it is due to its nature stunning but to fail to understand this man will result in a miscarriage of justice for all.

As a secular Jewish, although oddly kosher American woman in the abstract this seems removed; of another time and land. Yet my family has also been impacted by the Holocaust and to this day it is probably, as I discuss with my own father, one of the shaping aspects of our perception of self, responsibility and definition. Our family's struggle to leave Europe during that tumultuous time; the poverty, the loss of hope and lives. I am a grand daughter of the Holocaust generation and only a second generation from the discussions of my grand parents and relatives that had to go and live in South America because of quotas on Jews at that time in the United States. We were imbued with the concept that we had an obligation to maintain our history and a responsibility to carry all of those lost in the Holocaust forward.

In a more secular family (mine) informed by an uber reading father; our family discussions were about history and all religions and how religion impacted and shaped lives and the freedom of choice. In the religious world that concept of freedom can be heresy. The deviation from the strict adherence to prayer, all 613 commandments, all of the interpreted traditions of orthodoxy or Hasidism with absolute devotion is not permitted.

What if you are born different? What if you are gay? You don't have a reference for what you are experiencing? You seek and you learn you are an abomination. You are the antithesis of all you believe. You are a good person but all you experience, all you believe is destructive to your self worth. You are told you have a responsibility to your family line, do not be who you are. You will be good, you will fit in, you will lead the expected life.

The Sanz (or Tsanz) Hasidic dynasty was founded by Rabbi Chaim Halberstam (1793–1876) who was the rabbi of Nowy Sącz (*Sanz*, Yiddish: טאנז *Tsanž*) and the author of the work *Divrei Chaim* by which name he is known as well. He was a son-in-law of Rabbi Boruch Frankel Thumim (1760–1828), the rabbi of Lipník nad Bečvou (לִיפֿנִיק *Leipnik*) and author of the work *Boruch Taam*.

The *Divrei Chaim* (Rabbi Chaim Halberstam) was a disciple of Rabbi Naftali of Ropshitz, who was a disciple of Rabbi Elimelech of Lizhensk, a disciple of the Maggid of Mezritch, the leading disciple of the Baal Shem Tov, the founder of Hasidism.

Chaim Halberstam of Sanz, was known as the *Divrei Chaim* after his magnum opus on halakha<sup>8</sup> (Jewish Law). He attracted many followers and students, due to

---

<sup>8</sup> The collective body of Jewish religious laws derived from the Written and Oral Torah. It includes the 613 *mitzvot* ("commandments"), subsequent Talmudic and rabbinic law and the customs and traditions compiled in the *Shulchan Aruch* (literally "Prepared Table", but more commonly known as the "Code of Jewish Law").

Judaism classically draws no distinction in its laws between religious and non-religious life; Jewish religious tradition does not distinguish clearly between

his piety and greatness. Sanz has been succeeded today by the Sanz-Klausenberg, Sanz-Zmigrad Hasidic dynasties and the Bobov Hasidic dynasties, among others.

The *Divrei Chaim* was born in 1793, in Tarnogród, Poland. His first wife was the daughter of Rabbi Boruch Frenkl-Thumim; Rochel Feyga, who bore him five sons and three daughters. When she died he then married her sister, who died childless. His third wife was Rechil Devorah Unger, daughter of Rabbi Yechil Tzvi Unger, son of Rabbi Mordechai Dovid Unger of Dombrov; who bore him three sons and four daughters. He had many marriages and many many children and despite the year of his birth had children who died in the Holocaust.

The *Divrei Chaim* was acclaimed by the leading rabbis of his generation as one of the foremost Talmudists, poskin<sup>9</sup> and Kabbalistic authorities of his time, he received queries from Rabbis and communities from all over the world. His responsa,<sup>10</sup> as well as his Torah commentaries, published under the title *Divrei Chaim*, reflect his Torah greatness, his humility, and his compassionate nature. He was a champion of the poor and established many organizations to relieve them of their poverty. He was the first Honorary President of Kolel Chibas Yerushalayim. His compassion and generosity was legendary; he literally gave away everything he had for the needy; and went to sleep penniless.

During his 46 years as Rabbi of Sanz; that city was transformed into a vibrant center of Hasidism, attracting tens of thousands of followers.

Elliot is the great great grandson<sup>11</sup> of the *Divrei Chaim* and thus despite these allegations is viewed as close to this religious source; to Elliot his obligation was to follow this path.

Elliot's father was one of nine children and a twin. The twin, almost like the

---

religious, national, racial, or ethnic identities. Halakha guides not only religious practices and beliefs, but numerous aspects of day-to-day life. Halakha is often translated as "Jewish Law", although a more literal translation might be "the way to behave" or "the way of walking". The word derives from the root that means "to behave" (also "to go" or "to walk"). Sourced from Wikipedia and my own Hebrew School (Ramat Shalom) education.

<sup>9</sup> Poskin is the term in Jewish law for "decisor"-a legal scholar who decides the Halakha (Jewish law) in cases of law where previous authorities are inconclusive or in those situations where no precedent exists.

<sup>10</sup> Responsa (Latin: plural of *responsum*, "answers") comprise a body of written decisions and rulings given by legal scholars in response to questions addressed to them. In the modern era, the term is used to describe decisions and rulings made by scholars in historic religious law. (Wikipedia)

<sup>11</sup> Chaim Halberstam, the *Divrei Chaim* (great-great-grandfather), Rabbi Yizchok (Issac) Yeshaya (great-grandfather), Rabbi Yaakov (Aaron) Tzvi (grandfather).

movie Sophie's Choice, died in the death camps. Given the religious import of the line; Elliot's grandparents had a plan to get their children out of Poland. They had help due to their large following but they had to choose between the children. They choose two of the older daughters who were blond and blue eyed and who spoke Polish to look after two of the younger sons. At age nine, Elliot's father's head was shaved and he was told to pretend that he was mute as he did not speak Polish. The boys did not speak Polish, only Yiddish. The four children found their way from Poland to Hungary; the boys not permitted to speak so that they would not be discovered. Elliot's father was one of the boys; his twin was too attached to their mother to separate, so another brother was chosen, Elliot's Uncle David.

They walked over rotting dead bodies to pick for valuables and food. They ate rotting dogs. Elliot's father and three siblings made it to Hungary were the war came later.

As the war arrived in Hungary and the Jews were being rounded up. Elliot's father was one of the people who were smuggled on Kastner's Train.

"The Kastner train consisted of 35 cattle trucks that left Budapest on 30 June 1944, during the German occupation of Hungary, carrying over 1,600 Jews to safety in Switzerland. The train was named after Rudolf Kastner, a Jewish-Hungarian lawyer and journalist, who was a founding member of the Budapest Aid and Rescue Committee, a group that smuggled Jews out of occupied Europe during the Holocaust. Kastner negotiated with Adolf Eichmann, the German SS officer in charge of deporting Hungary's Jews to Auschwitz in German-occupied Poland, to allow over 1,600 Jews to escape in exchange for gold, diamonds and cash.

The train was organized during the deportations to Auschwitz in May–July 1944 of 437,000 Hungarian Jews, three-quarters of whom were sent to the gas chambers. Its passengers were chosen from a wide range of social classes and included around 273 children, many of them orphaned.

After a journey of several weeks, including a diversion to the Bergen-Belsen concentration camp in Germany, 1,670 surviving passengers reached Switzerland in August and December 1944.<sup>12</sup>

---

<sup>12</sup> Kastner emigrated to Israel in 1947. He was a spokesman for the Minister of Trade and Industry when his negotiations with Eichmann became the subject of controversy. Kastner had been told in April or May 1944 of the mass murder that was taking place inside Auschwitz. Allegations spread after the war that he had done nothing to warn the wider community, but had focused instead on trying to save a smaller number. The inclusion on the train of his family, as well as 388 people from the ghetto in his home town of Kolozsvár, reinforced the view of his critics that his actions had been self-serving.

Elliot's father was amongst those waylaid at the Bergen Belsen concentration camp. His twin brother, parents and grandparents were killed during the *Aktions* employed to liquidate the Bochnia ghetto. Elliot only learned of his father's twin through anecdotes and learned that his father was chosen to hopefully survive as his brother was too attached to his mother to be sent away from her.

Rivka Halberstam/Mother

After the war, Elliot's father, Usher, was taken in by an aunt and uncle; who had lost all of their children in the war. He had found his way to the United States. He did not marry until later into his thirties; because he had an obligation to have children. It was not a love match, he met Elliot's mother Rivka or Renee who came from her own Holocaust experience.

Rivka's family was initially from Germany. Early in the advent of the Nazi party, before Rivka was born, Rivka's father was taken to the Dachau Camp for interrogation. When he returned he was a changed man. His hair had gone from black to white. He had been a successful business man. They had had wealth and a good life. They sold everything and moved to England. Rivka was born in 1942 to her mom when she was in her 40s. Her next older siblings were already married. She was the youngest by far of five children and was doted upon until her father died when she was four. From there evolved an odd co-dependent relationship with her mother and grandmother. As they had no money; they took in lodgers and Rivka would serve them.

Her life was already one of dichotomy. She was a miracle birth to a woman in her forties for the day; she was doted upon by her father; yet after his death she was nothing but a burden because her mother could not remarry with a young child. She would as a child be sent to help other families care for their children as a nanny. She was sent to Holland at age twelve to assist a relative in the care of her new born. Rivka became as teacher and by twenty five she was considered old in the parlance of the day.

There was talk of an introduction. Usher was an "American." Rivka is

---

The allegations culminated in Kastner being accused in a newsletter of having been a Nazi collaborator. The government sued for libel on his behalf, and the defendant's lawyer turned the trial into an indictment of the Mapai (Labour) leadership and its alleged failure to help Europe's Jews. The judge found against the government, ruling that Kastner had "sold his soul to the devil" by negotiating with Eichmann and selecting some Jews to be saved while failing to alert others.<sup>[7]</sup> Kastner was assassinated in Tel Aviv in March 1957. Nine months later the Supreme Court of Israel overturned most of the lower court's ruling, stating in a 4-1 decision that the judge had "erred seriously."

kindness personified but she had no match, a handsome woman with all of the traditional hopes and dreams of a family and a return to the affection and value she once knew from her father. The description of the man: he was a business person, working on 47<sup>th</sup> Street in the Diamond District. He was promoted as an heir to a Hassidic dynasty.

Rivka came to New York in the early 60's with a relative. To her, this was so glamorous. They met three or four times. Now at twenty six years old, this was an opportunity to escape the servitude to her mother and to have a life she imagined.

This however was no love match. She was a romance reader; hoping for the myth of the prince to whisk her away. He was stern and practical. He would not even properly remember her name. They communicated only by yelling. Brooklyn was difficult and missing her grandmother the couple moved back to England, five doors from her mother and grandmother. Their first son, Elliot's oldest brother, Yonkie was born in 1969; two more sons (Moshe and Chaim) followed all within the first five years of the marriage. Rivka's mother died. Rivka's mission was for a daughter; son number four, Menachem, was born.<sup>13</sup>

Undeterred, she tried again and Elliot was born. Rivka so wanted a girl. She was depressed; and they did not bond. Elliot was dressed as a girl and treated as a girl for as long as his mother could manage it. In the Hassidic world boys do not have a hair cut until they are three years old. During this time, Elliot was his mother's doll; she dressed him as Little Red Riding Hood, as Cinderella. He felt he was a disappointment to his mother because he was not a girl.

Home life was frightening. There was passive and active aggression by Elliot's father. He went bankrupt in England. He had been trusting of the son in law of a friend. There was always upheaval. Before the bankruptcy there were ladies from Eastern Europe that would clean their home and his father had many affairs. It was so painful to his mother. Theirs was not an affectionate marriage. She managed her family. They remain together today despite failing health. Two of Elliot's brothers still live with them.

It was a noisy house with four older brothers who were rough and tumble boys. The parents were always shouting at each other. His father was violent. He would kick in doors; physically abuse the boys, especially the second and fourth brothers. Menachem and Chaim are serial drug addicts; this is another painful fact of this family.

Elliot was terrified of his father. When Elliot was seven and his next older brother was ten (this is brother four), his father pulverized him and then as his brother tried to escape the beating his father dragged him back by his hair and

---

<sup>13</sup> That Elliot is one of five brothers is another parallel to the young man in this matter; has he too was one of five brothers.

continued to beat him. Elliot was somewhat sheltered by his mother, in response to a rage visited upon him by his father when he was three. Elliot had had a fit over a toy. His father threw him against the wall and he was seriously injured. He believes his father felt guilty about this as he was so small and he was thereafter mostly physically spared, yet he always felt the fear of the edge of the rage.

The dysfunctions of the home emanating from the experiences of war: no wasting food; anger; rage; emotional distance; ritual prayer. At 6 a.m. they were dragged to synagogue every morning. Elliot never loved synagogue; it seemed a task but it was their perceived duty.

Elliot was sent to Hassidic schools when most of the teachers who were rabbis were Holocaust survivors. The concepts of the need to stay on the path, which in Yiddish is known as the *derech*, were paramount in every aspect of life.

Elliot loved English; he did not enjoy his religious studies and all were supposed to love the study of Torah, our base religious text. Religious schools involved corporal punishment. Elliot knew he was different.

A significant event in Elliot's schooling was the visit of the then Grand Rebbe of Kaleve, his name was Issac Taub. It was notably odd for a rabbi to not have children. He was an odd looking man, as he had no facial hair and it seemed he was more feminine than masculine. This man had been a survivor of Dr. Josef Megele, at Auschwitz, if any of you are unsure of who this person is, please advise, however in short he was infamous for his human medical experimentation. This Rebbe was the subject of hormonal experimentation and even had an effeminate voice. The Rebbe of Kavele, Issac Taub, was a visiting teacher to Elliot's school; when he learned of Elliot's lineage and that Elliot did not really enjoy religious study he made a spectacle of Elliot in front of the class yelling at him that if he did not apply himself and carry his line forward the Nazis had won. It was frightening, embarrassing, isolating and impacting all at once.

In front of the school the rabbi, yelled at him: "For you your grandparents, your family, our families were killed; all of the horror we have lived so you could be born; you have to live up to your responsibilities. You are the one the Nazis were trying to get to you the children-you the future."

The memory has never left him and it was part of the core of what shaped his path.

#### Elliot Was Sexually Abused As A Child

From the age of twelve; Elliot had experiences in which he was sexually abused. He had gone to a summer Camp Aguduh Camp, it was a two week sleep away experience. Every day he would be summoned by the camp director to check him for a "medical problem." The director would fondle his testicles and masturbate

him. He did not know what to do; he told his mother and his mother registered the concern.

Next at school what began as abuse became a relationship of sorts. Elliot was approximately thirteen years of age and two older boys took an interest in him. He was pressured in to both receiving and giving oral sex. He was distraught but graduated into having feelings for one of the boys and their affair of sorts continued until about his seventeenth year when he graduated. He loved this boy and he understood the boy loved him.

At this time in his home, being the youngest of many brothers who were older he saw them interested in male / female pornography. Elliot found that he was not at all interested in the pictures of women. His brothers would make homosexual or gay references referring to him as a "poof" and "faggot." Then, "poof," "faggot" were derogatory British terms for gay men.

Elliot was distraught and confused. He knew what was written in the Torah:

"A man who lies with a man as one lies with a woman, they have both done an abomination; they shall be put to death, their blood is upon themselves." Leviticus 18:22; this is part of the weekly Torah portion (*parashah*) called Acharei Mot which comprises Leviticus 16:1-18:30.

Elliot, did not understand his brothers' reference; he knew he had feelings for a boy and they had engaged in touching and sex (although he did not have a definition for it at the time) and Elliot was, as he says, enthralled, with the boy. He discovered queer literature in contrast to the "normal" pornography of his brothers; he had found it titillating.

As he became an older teen, Elliot went to the secular public library – given the year- he took out psychology books- what did they say about homosexuality- "what was I?"- this was Elliot's quest.

The books of the 80s referred to homosexuality as abnormal; unnatural; psychiatric works noted it was something to be cured. This is what he found in a secular library. He was sick, obviously. Who he was, was, wrong; the bible said so; the psychology books said so. He was despondent. He was lost. He was seeking himself yet with no resources in his religious community and the status of the society's prejudice against homosexuality he was without support.

Elliot was adrift. It confirmed his lack of religiosity; something is so very wrong; "I didn't love praying or Torah study," I love a boy; yet the only reason I exist is to do what I am not- this is the only reason my father survived the Holocaust. "I am so wrong."

He made an active decision to lead a life that was "proper," on the "path" or "*derech*" as is said in Yiddish and expected in the religious community. As he got older he, despite his affection for the older boy, Elliot would refuse him more and more; his lover was disappointed. As time went on, the boy married appropriately as well and had children. They lost touch; they had been together in school from when Elliot was 11. Yehuda, the boy, began touching Elliot when he was twelve or thirteen.

Elliot asked himself what he could do to change and be what everyone expected. He would apply himself to his studies with full vigor; he would force himself to study; he would fit in; he would try to be what everyone wanted him to be to fit in. In the dystopia of his family he would adapt and support the passions of each of his siblings and his parents. For his oldest brother who loved computers; Elliot learned computers so he could share with this brother. For his next brother who loved movies; Elliot was with him a movie buff. For the next brother who loved martial arts; Elliot would learn the names of all of the moves and the history of martial arts. For his mother; who lived a life of depression he would accompany her to the malls and supermarkets and be her essential girlfriend. Elliot is so very kind and understanding he saw his mother's pain and that his brother's did not pay her any mind. For his father, to bond with him, Elliot would go to synagogue.

Elliot found meaning in accommodating everyone else. He justified himself and suppressed himself through being what others wanted him to serve. He learned to be akin to each of the proclivities of his family so that he would fit in. He would not and could not fit in if he were to be himself.

After high school Elliot went to Israel for three years of post yeshiva study. He was determined to pray his homosexuality away. He made a religious decision; not to engage in the thoughts of his orientation.

At eighteen Yehuda wanted to reignite their relationship. Elliot, painfully conflicted, refused.

Elliot was, some years later, invited to Yehuda's wedding. At the wedding he again met Sarah. Sarah is Yehuda's younger sister. They had all known each other as children. Elliot's family and Yehuda and Sarah's family were friendly with one another. Elliot and Sarah were friendly as young children and they had a great friendly conversation at Yehuda's wedding. Yehuda, arranged a match or a "*shidduch*" between his sister Sarah and Elliot.

The mothers were pleased. As Sarah and Elliot got along; therefore this must be a love match; and they were married. Elliot was 23 and Sarah was 19.

In this religious community, there was limited access to and knowledge of the opposite sex. All schools were either for boys or for girls. The only woman in his home growing up was his mother. Socially the mixing of boys and girls was not

permitted. His father was remote; as he himself had no father figure. His parents' "crazy" marriage where there was no conversation only screaming; shouting and slammed doors was a constant soul churning dyspeptic nausea. Elliot's attempt to identify with the likes of each of his family members to fit in with them was all a suppression of himself. This all added to the turmoil, confusion and instability of his identity.

His siblings each had a different place to his parents. His eldest brother was loved by his father; one brother was loathed by his father and he turned to drugs and he remains limited by drugs and this has effected his ability to reason. The other brother had also turned to drugs and has been in and out of sobriety. Another brother battles in a bitter ongoing divorce. Elliot would please them all. He would be the good son. He would stay on the *derech*.

Elliot started with a path towards law at Touro College. He married Sarah during his last year of college. He was on track for law school. His wife moved to the U.S. from the U.K. for the marriage. When she was nineteen, he was getting ready for the LSAT. She was lonely and miserable in the U.S. She wanted to go back to the U.K.

For her they moved back and he started at Westminster University for law. The study of law in England did not make him happy. He sought a guidance counselor at Taverstock Career Development to help him find a career path. He was tested and the results of the testing demonstrated that he seemed to have an enjoyment of and aptitude for counseling and psychotherapy.

He then embarked on his new path of study. He took classes in education and psychology. He needed to work full time as he was married and had to find his way to a path where he could support his wife and the family they would have.

There was nothing nefarious in the career path he chose.

Sarah and Elliot were and are truly friends. That is probably all they should ever have been but they both came from a world of expectation of marriage. They felt so very lucky because they were friends and they liked each other. There are many stories they had heard of mismatches and sadness; Elliot had already grown up in that home. In retrospect yet another aspect of Elliot's emotional contrition is for Sarah; he was a terrible con to his wife; his true friend. The physical and emotional betrayals with the young man have impact to Sarah as well.

When they married, Elliot was 23 and Sarah was 19. Raised in the community they had little sexual experience. Elliot had only experiences and affection for who now was his brother-in-law. The expectation is that the marriage will be consummated physically. It was extremely difficult for Sarah and Elliot to achieve a sexual relationship. The concept of sex for Sarah was very traumatic. Before grooms and brides marry in this community; there are actually counselors

for each sex. Bride counselors tell the bride about sex and the same for the groom counselor; each giving directions to the respective sex.

As the concept was so traumatic for Sarah; and as Elliot was the person he was, he firstly actually cared and loved her and did not want her to be frightened or hurt by their expected duties. He understood his obligation from his groom's counselor. So, instead they lived together as friends and gradually the sexual aspect of the relationship matured. Sarah was so traumatized by the concepts that even when she thought she was ready; the fear manifested in her body, it was too painful. They grew to one another. They lived as expected. They abided their duties.

Before they had children, Elliot told Sarah that he was also attracted to men. He did not tell her until the aftermath of this matter, that he had been in love with her brother and her brother had been in love with him. Elliot does not know if his brother has even told his own wife. Sarah's reaction of course, was aghast, why would my brother do this to me. But Yehuda loved them both as he could, near or far, appropriately or inappropriately. Elliot explained that Sarah and their family would be his life. Elliot would stay on the *derech*, the path.

As Elliot's studies and work progressed, he was counseling properly as a professional, under guidance while still a student. While he worked on his masters degree, he was employed at an agency in the U.K. The patients he worked with were assigned by the agency. The work was school based, the population were young adults and the issues were how to cope with issues from the respective individual's home life to better cope with academics and in school surroundings. Elliot could relate to this as he had come from a home of chaos and had adapted.

After Elliot's first child was born he discovered homosexual pornography. There was in reality nothing inappropriate. Pornography is extant and seems to be the one of the primary drivers of the internet according to some statistics. Nor according to sex therapists is pornography deviant in itself- the caveat of course is one of the central concerns of this matter. Child or adolescent pornography is not acceptable. The pornography Elliot enjoyed was not inappropriate; it was simply adult male on adult male.

As part of his training in psychology he had to engage in therapy himself. You must yourself experience analysis to be a competent and balanced therapist. In this period of study, his training now secular, he was able to bring his religious perspective into discussion that the secular students did not have view of. Yet his orientation remained suppressed and unexplored even in therapy, he had chosen to stay on a "proper" path.

Elliot and Sarah discussed moving back to the U.S. to live in a modern orthodox community. The religious aspects of life would be very present but it was a freer community of thought. Note that from the secular perspective it is still quite strict but it was more open than their previous training. The community was all

younger couples. Their eldest was in first grade and it seemed a healthy time for the family to move so that the children's schooling was consistent. Sarah seemed ready to leave the U.K. and her family; and as the children were a bit older Sarah too would have more free time.

In Elliot's research, he found that his masters from the U.K. would permit him to simply apply for licensure in the U.S. His research was incorrect. He had to do his masters all over again in the U.S. He also had to work to support his family.

At the Focus Agency he was the first director. He worked here from 2010 through 2012. The owner of the agency lived in Israel; as he did not have to practice to do this job he was the coordinator for all of the occupational, speech, etc. therapists and social workers. In 2012 Focus wanted to restructure so there was no longer the need for Elliot's position.

At the same time he moonlighted at Jewish Family Services in Passaic.

He sought this masters degree via a correspondence school Edinboro University in Edinboro, Pennsylvania. He worked, went to school, studied and was a present father to his children and husband to his wife.

Elliot became the director of development at Jewish Family Services, which essentially meant fundraising. A year later Elliot was promoted to assistant director.

#### History of Elliot and the Complainant

A co-worker who he did not at the time know, as Elliot worked evenings, had two sons. The co-worker wanted Elliot to work with her sons. At the beginning one was 17 or 18 and the other, who is the victim complainant herein was at the time 14 years old. Elliot saw them separately and together; the family issue was that the brothers never got along; the older brother was very cruel to the younger brother. He saw them on alternate weeks and then on occasion he would see them together.

In retrospect in the many months Elliot has had to think about the evolution of this matter he reflects on the unhealthy and chaotic environment of the Jewish Family Services Agency's own culture. Co-workers were constantly using insurance so that co-workers would provide therapy to their respective children. The blurring of boundaries and the sharing of each other's business was not healthy from a counseling standpoint. Elliot is quite quick to assert this was no excuse for his behavior but only in retrospect was he able to see the blurring of boundaries and how unhealthy it was for all.

The co-worker mom wanted the therapy completed before the older son moved to Israel. Thus Elliot had from March to September to accomplish the goals

of the therapy. The therapy included not just the boys, but the whole family. At core was the use of the younger brother by the parents to communicate to the rest of the family. There were three younger brothers as well.

The second brother is the victim/complainant as noted above. He was enmeshed in his parents' marriage. His mother confided in this brother over his older sibling. She shared with him when she had miscarriages and intimacies that the older brother would come to know from his younger brother. The older brother felt that his younger brother made him look badly. Much of the discussion would be regarding why the younger brother had such a close relation to his mother. Elliot recalled a particularly productive session wherein the older brother was able to voice a set of complaints wherein the older brother would complain, "I don't know why you know mom had a miscarriage; why would you know that?"

The second brother, our victim/complainant would email Elliot during the course of the treatment, unburdening his feelings about his older brother being mean to him. Elliot checked with his supervisor to seek permission to have contact outside of the parameters of the in person therapeutic interface that was the design of the agency. This conceivably would be work and hours beyond the insurance coverage. The supervisor gave her blessing. The therapy with the outside contact continued to its conclusion. Insurance only covered fifteen sessions. The older brother went to Israel. The relationship was somewhat improved and nothing untoward occurred as between Elliot and our victim.

The mother sought to re-engage Elliot a few years later because she wanted her son to skip a grade at school and the school required a particular evaluation to insure that the child was emotionally ready to advance over his peers and be in an older peer group setting. During Elliot's work with him during this period the purpose of the therapy was accomplished short of all of the sessions covered by insurance. In therapy the young man would discuss with Elliot that he felt he was the barometer of his mother's moods and felt a responsibility to his family.

The parents were also concerned because their son had become obsessed with working out. He was a devotee of P90X! To a religious family this was not part of a proper path. They wanted Elliot to discourage this behavior. The parents were concerned that their son was a homosexual because he would compare himself to other boys.

All of this is evolving as a parallel to Elliot's experience. He was his mother's ear; he was his mother's companion. He was a homosexual man and he chose to stay on the *derech* and suppress what was natural to him. He was one of five boys as the young man is. He now is counseling this young man who at 16 was expressing his own questions about where he fit; who was he; what were the possibilities beyond the expected traditional religious path.

These crimes did not spring from a carefully hatched plan. These crimes sprung from an obsession, an actual love and a split in self that permitted this dichotomy of a caring man who lived a life to please others to a man so enamored of this young man, the actuality, the physicality and the possibility of what may have been in his own life that this literal bizarre affair occurred.

The young man was experiencing that teenage conflict with his parents. He wanted to go to UCLA. The parents would not think of permitting their son to go off to California and live a secular life at such a university reknown for its free thinking and free lifestyles. The parents banned the letters "U," "C," "L," "A." The parents asked Elliot to dissuade their son from these radical plans and ideas. Stamp out this homosexual seeming affinity for working out obsessively and comparing your body to other boys.

Elliot was pained looking at this young man's crossroads knowing the cross road he had faced; the traditional choice he made for conceptions of duty and tradition and the loss he perceived of his inner self. He loved his wife; they were friends and love as deeply as friends can love; they had sex and the act is pleasurable even if his preference was for men; and there was joy in the intimacy of sharing the physicality with Sarah. He loved his children and being a father. But part of him was suppressed and he lived in this manner.

Elliot was literally stunned the day the young man sent him a photo of himself without a shirt on. There was absolutely nothing sinister in the send; the young man was simply proud of how he looked after working out so much with P90X. As any 16 year old you are experiencing self and you are in your state of becoming and sensing your sexuality. It is entirely innocent; it is part of all of our becoming; we can all remember.

For Elliot, this was a "thunderbolt."<sup>14</sup> He was so struck by the beauty of the young man he was impacted; again this was not nefarious it was a state of being in the moment. He did not comment on it to the young man. He was conflicted in himself; he was a gay man that had suppressed his own sexuality and it was suddenly confronting him and causing an inner turmoil for Elliot. This turmoil was not about how to manipulate the young man; it was again about who Elliot was, his identity, his suppression of his orientation.

---

<sup>14</sup> As referenced in Sicilian culture and made famous by Mario Puzo when Michael Corleone meets Apollonia Vitelli: "The two men claimed Michael has been hit by what Sicilians call "the Thunderbolt" – a powerful, almost dangerous longing in a man for a particular woman. "You can't hide the thunderbolt. When it hits you, everybody can see it. Christ, man, don't be ashamed of it, some men pray for the thunderbolt. You're a lucky fellow." The character properly courted Apollonia and sought her hand in marriage. It was an immediate experience of not mere lust but love.

The parents of the young man wanted him to stay on the *derech*, the proper path from their perspective. Live a religious life; stop engaging with what they saw were homosexual tendencies; stop working out and showing your body. They sought the therapist's assistance in suppressing what they saw as the imperfection of homosexuality and seeking a secular experience.

The therapist, Elliot, had been at this crossroad. Elliot initially sought to follow the desires of the parents. Encourage the young man to stay to the path, *on the derech*. As their discussions evolved from Elliot's perspective the young man would seek personal information; to Elliot it was as part of training important to maintain boundaries; therapists are not to give too much information to their clients as it can be used as a manipulation-the focus is to be on the client. But, the young man already had plenty of information on Elliot because his mother was a co-worker and she told her son about Elliot. He was a married man with three children; he was a devoted father and husband. In their conversations from Elliot's perspective the young man would find it funny to try to make Elliot uncomfortable, or blush. He would ask certain questions about sexuality. The young man could not and did not know Elliot's inner conflict. This was Elliot's perception.

Conversations continued; the focus was on the goals of the young man. His frustrations with wanting to go to college at UCLA in California; he wanted to be a model; he was questioning his own orientation; he did not know if he wanted to maintain a religious life. Elliot tried to guide him as his parents wanted; but also was concerned that the young man not sacrifice all he wanted to be and who he was to please his parents or duty or tradition. Elliot had consciously chosen the path of duty and tradition; what else could life have been, this pondering stirred within him and created actual appropriate concern for the future of the young man in his own life choices.

The sessions covered by insurance ended but the emailing and texting did not. The conversation continued. Admittedly Elliot in his mind was enthralled with the young man, his beauty and that he was at a point in his life where all possibilities were still before him. He wanted the young man to make better choices for himself than Elliot had-not that Elliot's choices were wrong; they were societally correct in every way and he attended to his responsibilities to his wife and children on every level- yet Elliot knew there was so much still missing in his perception of self. He enjoyed homosexual pornography, which was in contrast to the heterosexual world he lived.

#### Joshua Davis, Alter Ego of Elliot

The invention of Joshua Davis was meant to be a one time conversation to provide the young man a perspective on life where he had choices and could have a fulfilling life even if he chose something beyond his parents traditional desires. The irony is that Joshua Davis was everything Elliot Halberstam wanted to be: he was a

dashing successful attorney, who had grown up religiously and understood he was homosexual and chose to lead a homosexual life. Joshua Davis was a free man; he was a thinking man who despite coming from a strict religious world where he was taught he was an abomination was accepted by others; he lived a bon vivant life where all walks of people accepted him for him and he was happy. He lived purportedly in Hong Kong because clearly there would be no way for him to meet anyone in person as, he did not exist.

Elliot's introduction of Joshua Davis was to show the young man he could lead a life he chose and be happy. Joshua Davis did not adapt to everyone around him to be accepted; Joshua Davis simply was. Joshua Davis was who Elliot wanted to be. A sad thing happened in the intended one conversation meant to inspire the young man. The young man was more interested in Joshua Davis than in Elliot his therapist, his ear. The young man wanted to speak to Joshua Davis more than to Elliot. Joshua Davis adapted encouraged all that the young man wanted to be. He wanted to be a model. Joshua Davis instructed how this could evolve. Joshua Davis would in essence direct all that evolved to this matter. Elliot did not want to lose the attention of the young man, he was so taken with him.

As we know, there was no one else in this matter other than Elliot and the young man. Yet the exchanges between the "three" are detailed. In the exchanges you can even see where Elliot adapts to Joshua Davis trying to impress him and the young man. Elliot again is fitting himself in in this elaborate alternative life fantasy that has bridged into reality.

For Elliot, he has an evolved emotional relationship with the young man having worked with him years before and then the second work to assist him in skipping the grade. Through the second work he learns that the young man has the very conflicts that he experienced but it is more than a decade later our society has changed; the young man can have a good life and not be relegated to the expected strictures of a traditional existence that for all that is wonderful, is still for Elliot, somehow empty.

The provision of the photo and the "thunderbolt" experience heighten the confusion for Elliot. He is an extremely good and dutiful man, he does not do bad things; yet here we are in a factual scenario that is grossly distorted by all standards. The evolution of the exchanges maturing to photographs; touching; oral sex; video of sexual acts as engineered through the discussions of Elliot as Elliot and Elliot as Joshua Davis reflect a point of division in Elliot's mindset of an alternative reality where he is experiencing a relationship with the young man. Elliot is in a closed circuit world of distortion where there is a victim.

Elliot did not see it; he should have seen it; he was trained to be a therapist and to maintain boundaries and certainly not take advantage of those in his charge. Yet there is the explosion of layers of life so suppressed that he is analogously

intoxicated by the young man; and the evolution of a physicality he had longed for for his entire life and had desperately tried to suppress.

This case is not about child pornography or the creation of child pornography for distribution or the manipulation of a young person because the person is a young person. This case was a perfect storm where there is a young person and a good man whose psycho-sexual experiences and choices imploded.

As if coming to from a state of somnambulance, Elliot looks at the wake of these acts and is equally stunned. He is shocked that he did this. His contrition is pure, as is his concern for the young man. This is not who Elliot is, yet he understands what he has done. When I review some of the emails with him; he does not even remember them or the logic for them.

He is not a predator; he was not seeking other young men. Notably in the review by Dr. Krueger after testing is not a pedophile. Additionally on the explanation of the Tanner scale; it was not a child or anyone resembling a child that was of interest to Elliot. The young man was physically mature; but he was not legally so.

The goal of the filming and photos was not at all for distribution or posting. It was it would seem an attempt to capture that, which would be finite. Elliot directed himself in the voice of Joshua Davis in manners that were deprecating representing his own insecurities about himself and acknowledging that the young man would not find him attractive. Elliot in his heart did not feel worthy of the young man, Joshua Davis would say about Elliot interacting with the young man to the both of them not optimal, not the best option. It was to encourage the young man to permit Elliot to touch him; for Elliot could not perceive he would be wanted in this manner. It was a ruse but one of desperation to be part of this physical moment. The talk was talk he perceived would be cool or appropriate to a person of Joshua Davis' stature and complimentary to the young man in a sexy fashion.

Perhaps this affair would be the one time lapse when Elliot Halberstam was experiencing the raw sexuality that he could have experienced if he had not stayed on the path. This finite time; was a world of fantasy informed by his experiences with pornography and his own concepts of what a sexual relationship with a man would be. The distortions graduated the young man into participating evolved from a well meaning created persona; as each step occurred Elliot was more obsessed with the young man; not because of his youth; it was him and this became a relationship that neither would permit: on the young man's side because he did not seek a relationship with Elliot- he wanted to be a model; on Elliot's side he was enamored with the young man and he was experiencing the flush of the sexuality that he had sought to extinguish within himself. He did not feel worthy of the young man, he created a fantasy self that the young man admired, respected and thought was exciting (at least as Elliot perceived). It seemed this was a complete separation of personality permitting Elliot to act over a period of time in abrogation of all he

believed; suppressed in himself and his innate goodness; he not only went off the *derekh* he went off a cliff.

These transgressions are amazing yet they are not the definition of Elliot nor are they a predictor of his future. He is an intelligent man who is extremely cognizant of his wrong and through his detention has sought to study himself and how *he* of all people could have taken these measures and committed these crimes.

As a prognosis he is an example of someone who we can experience hope, despite the actions which have brought us together.

Counsel's goal obviously was to achieve a plea with the lowest mandatory minimum while cognizant that the guidelines exposure remains significant.

The plea to count one charges coercion and enticement of a minor to engage in illegal sexual activity in violation of Title 18 U.S.C. Section 2422(b). It carries a mandatory minimum of ten years.

In understanding the psychological history that permitted the evolution of these events and knowing that Elliot did not engage in producing the images for the purpose of distribution, sale, live streaming but to find a way to engage with the young man and the receipt and capture of the footage was to preserve this expanse of experience to return to the traditional *derekh*/path he had subsumed himself to with the ability to reflect on his brief period on what it could have been to have been a free man and have properly chosen a life where he was an accepted gay man in an appropriate relationship.

The details of what the ultimate sentence should be are all shaded by a person's unique history. The mandatory minimums are without consideration to the individuals at issue.

Elliot wants very much to express his sincere contrition; to assure all that this lapse is still stunning to him and came from love and passion inappropriately expressed through an overlay of fear of the young man in not seeking a free life and in seeing himself as each of the characters in this tragedy. He recognizes all he did to the complainant was wrong. He recognizes his actions impact to the complainant and his family.

#### Seeking To Take Full Responsibility

Mr. Halberstam sought to take responsibility from the outset of this matter.

The delays in coming to a plea in this matter were due to delays in getting to review the evidence at the FBI with Dr. Kreuger and Agent Spivak – one delay was even due to a flood at 26 Federal Plaza. The discussions with the Government were ongoing and they graciously agreed ultimately to meet with Mr. Halberstam. During

that meeting it was revealed that the Government had mistakenly ascribed items on a certain computer to Mr. Halberstam, and as demonstrated by the May 22, 2018 letter it was not a computer belonging to Mr. Halberstam, it was the property of the complainant. At no time from my first meeting Mr. Halberstam did he sway from his desire and direction that he would take responsibility for his actions.

MDC Detention

Mr. Halberstam was arrested on November 15, 2015. He has been in custody for three years and three months. Initially he was at the MCC. When the other detainees learned of his offense he was told he had a few minutes before he would be stabbed. He ran, panicked, for help to the personnel in charge of the unit and was removed. He was ultimately transferred to protective custody at the MDC.

The reports, and now actual investigation into the treatment of detainees and conditions of MDC are abysmal. Several articles are attached at Exhibit 6, to reinforce what the Court and all in our jurisdiction know that the conditions at MDC are oppressive and this may be considered in sentencing.

The harsh conditions at pretrial facilities – including lack of ample programming, limited family visits, and lack of exposure to sunlight and the outside – are well known to the courts. See, e.g., *Bell v. Wolfish*, 441 U.S. 520 (1979); *United States v. Gallo*, 653 F.Supp. 320, 336 (E.D.N.Y. 1986).

Even prior to Booker, courts held that “pre-sentence confinement conditions may in appropriate cases be a permissible basis for downward departure.” See *United States v. Carty*, 264 F.3d 191, 196 (2d Cir. 2001). See also *United States v. Farouil*, 124 F.3d 838, 847 (7th Cir. 1997) (harsh conditions of confinement constitute valid ground for departure); *United States v. Hernandez-Santiago*, 92 F.3d 97, 101 n. 2 (2d Cir. 1996) (remanding for reasons for downward departure due to “harsher incarceration” due to unavailability of programs); *United States v. Brinton*, 139 F.3d 718, 725 (9th Cir. 1998); *United States v. Mateo*, 299 F. Supp.2d 201 (S.D.N.Y. 2004); *United States v. Francis*, 129 F. Supp.2d 612, 616 (S.D.N.Y. 2001), citing *United States v. Sutton*, 973 F. Supp. 488, 491-495 (D.N.J. 1997).

In *United States v. Behr*, 2006 WL 1586563 (S.D.N.Y. 2006), the court noted that a judge had “reduced an individual’s sentence by one third based upon the harsh conditions in Unit 11-South at MCC[.]” *Behr*, at \* 5. In light of the harsh conditions at MCC, the defendant in *Behr* was sentenced to a non-Guidelines sentence. *Id.* See also Ken Strutin, “Cognitive Sentencing and the Eighth Amendment,” *New York Law Journal*, March 24, 2015, available at <<http://www.newyorklawjournal.com/expert-analysis/id=1202721348619/Cognitive-Sentencing-and-the-Eighth-Amendment?mcode=1380566174563&curindex=11>>.

Judge Cheryl L. Pollak referenced the "third world" conditions at MDC, "some of these conditions wouldn't surprise me if we were dealing with a prison in Turkey or a Third World Country... It's hard for me to believe it's going on in a federal prison." "Federal Judge Appalled by 'Third World' Brooklyn Prison," attached at Exhibit 6. Judge Analisa Torres is currently involved in a study of the conditions at MDC in the wake of the power loss and closure of the facility to visitors and attorneys and the additional deprivations to the detainees.

Mr. Halberstam's elderly mother has further experienced abuse in trying to visit her son. Visits are on Fridays, the day of the Jewish Sabbath, during the winter months her time to travel is severely limited. She is a woman with difficulty in moving about and hard of hearing. Her treatment at the facility is not what should be expected, this is so for many visitors and even attorneys at times however she should not be mocked for her appearance and ethnicity. Elliot often spied the jokes while his mother visited and they were together.

During the shutdown there was either no heat or if the heat worked they were locked in in oppressive heat. They were locked in in total darkness. Elliot has one window to the side of the building he would have light until about noon. Other than that, locked in a room in darkness. They were told they were animals. Feedings would be delayed by hours if one person complained. Elliot had purchased a permitted book light to read by. On the Sabbath he would not be able to turn it off as he cannot use electricity, once the battery died he would again be in total darkness.

He has sought psychiatric counseling as he recognizes the need giving his training and this coming to accept his homosexuality and coping with his guilt in this matter. There is little.

He has been given blood pressure medication and some medication for depression. However, since January he has had an infection for which antibiotics were necessary. He was not given enough for a full course, the infection raged back. I wrote to the legal department a full course of antibiotics was given. The infection returned, he made his proper applications for medical attention, he was told he would need to go to the hospital for a surgical draining of the infection. It is painful and it persists. When I saw him yesterday, his right elbow was the size of a baseball. I again wrote to the legal department.

Accordingly, it is respectfully submitted that an additional adjustment below the Guidelines is appropriate to account for Mr. Halberstam's extended pretrial custody at MDC.

#### Accomplishments at the MDC

The intense difficulty of confinement at the MDC is a punishment above mere detention. Yet within this construct, Elliot has determined to be a positive for others and to engage all he could. Attached at Exhibit 4 please find Mr. Halberstam's

certificates not only for the completion of programs, but for his instruction of courses as a tutor.

Of the basic courses that Mr. Halberstam engaged in are U.S. Department of Justice Federal Bureau of Prisons MDC Brooklyn Education Department Certificates in Resume Writing & Job Interview Skills (March 3, 2017 and January 31, 2017), Art Class (February 14, 2017), Holiday Fitness Challenge (May 29, 2017 and January 16, 2017), Basic Financial Management (December 16, 2016), Anger Management (November 29, 2016), Card Making Course (March 20, 2017 and August 17, 2016), Health Education Course (June 30, 2016); and Basic Cognitive Skills, Sessions from August 8, 2016 to December 15, 2016 for a total of 8.67 hours. See, Exhibit 4(A).

Mr. Halberstam received certificates from the U.S. Department of Justice Federal Bureau of Prisons MDC Brooklyn Education Department in recognition of his *Instruction* (italics in the original) of Anger Management as Tutor (March 10, 2017); his *Instruction* (italics in the original) of Basic Financial Management as Tutor (March 10, 2017), his assistance for *Instruction* (italics in the original) Entrepreneurship (August 25, 2017 and September 9, 2017). See, Exhibit 4(B) He was so very proud when through his work with other detainees in one of the Anger Management curriculums he directed an individual approached him and thanked him for tools in thought which he stated if he had had he would not have broken the law. He thanked Mr. Halberstam for his insights and help which he would employ in the future.

Mr. Halberstam as well did correspondence courses with The Aleph Institute and received Certificates of Completion in "Ethics of the Fathers," "Rambam-The 13 Principles of Faith" and "JLI- You Be the Judge 2" all correspondence courses, in ethical thought within Judaism. See, Exhibit 4(C).

#### Letters of Recommendation

Unique as well to people I have represented, a number of people who were detained with Mr. Halberstam sent letters on his behalf with regard to his inspiration to them, his efforts to uplift and counsel them. Each reflect on his kindness, respectfulness and consideration of others. Each note that despite the challenges of their extreme conditions at MDC, Mr. Halberstam remained in helpful and willing to listen or to hear someone vent, he remained positive and polite. See, letter of Frank DeSanto, retired police sergeant. Mr. DeSanto had served a township in southern New Jersey from 1998 – 2008 and his cell was next to Mr. Halberstam's over the past year. Mr. DeSanto reflects that Mr. Halberstam's kind and respectful nature have been a ballast to him and to others. He noted his perception that a person should be as well judged not just for their mistake but from how that person learns from their mistake in the face of adversity. He perceives Mr. Halberstam as seeking to be a positive for all in recognition of his transgression.

Mr. Edgar Veytia, an attorney from Nayarit, Mexico has been in Mr. Halberstam's unit for the past sixteen months and has found Mr. Halberstam to have been welcoming, friendly and an emotional and spiritual support. He noted that Mr. Halberstam had taught several classes on the unit and only received positive feedback. Mr. Veytia sees Mr. Halberstam praying every day and his offering of emotional support to everyone on the unit.

There are letters from: Former Philadelphia police officer of 17 years, Francis Rawls who has been housed on the same unit with Mr. Halberstam for the last year and half. Mr. Rawls reflects that through their "conversations and [ ] activities over the course of that time period Mr. Halberstam is a thoughtful and generous person, soft-spoken and eloquent in speech and as an Orthodox Jew, deeply religious. He does all he can to stay out of trouble and he knows of no one who has a problem with him."

Avery Jack Powell, also a detainee in Mr. Halberstam's unit writes that thought he is a Jew he had strayed from faith and was struggling to find it. Mr. Halberstam has been a source of great friendship and support. He has taken the time to help Mr. Powell relearn Hebrew and the everyday prayers. He has "helped me to study Torah and encouraged me to be a better person."

Former police officer and firefighter Brian Dement has been on the same unit with Mr. Halberstam for the last 26 months. "I would like to inform the Court that he is one inmate I can speak highly of. Elliot is helpful to myself and others to anything he can to. He is respectful in his actions and words. We both enjoy reading and have shared many books" and discussions about them. "I will often speak with him about personal situations and frustrations and he is always helpful in his insights. I can attest that his is an inmate who truly conducts himself as a gentleman."

Fernando Clarke has been on the unit since December, 2017 he reflects on Mr. Halberstam's knowledge and that "to professionally interact with Elliot is an academic joy." Mr. Clarke is a Bachelor of Arts in Political Science, Masters in Criminal justice, forensic psychology, and has participated in continuing medical education with the Department of Psychiatry at Harvard Medical School; and was with NYC gang intelligence.

Most poignant of the persons who were detained at MDC with Mr. Halberstam is the letter of Shimen Leibowitz who was with Mr. Halberstam for most of his two year sentence. They met at Jewish religious services. Mr. Leibowitz knows that Mr. Halberstam has pled guilty and taken responsibility for his crimes but he notes this is not the definition of who Elliot really is.

Mr. Leibowitz details the harsh and difficult conditions of the MDC especially for people with no criminal history or exposure such as he and Mr. Halberstam. He speaks of the fear of a misinterpreted nod of the head and what that may beget; he speaks of the overcrowding the stress of living between "gangs and groups;" he

speaks of fights and stabbings happen often causing all to be locked up as if it were in the SHU.

"These all nightmares and much more make all there under tension and has a very bad effect in daily bases, taking away a person's mind of normal life to a sever[e] extent. But in the same time also does not always have the right [e]ffect prison is supposed to have on a person. There are so much people there that don't only learn to have remorse, but rather how to pick up in crime, which is actually real stupidity but the fact."

"But that is not the case with Elliot. In the time I had the privilege to get to know him, I have learnt of this person as if he was an angel. He came to my rescue at every hard time I had, and would explain to me that we are here to teach us a lesson on our doings, and that we need to try to look at the positive part of what we achieve, that we learn the right way of life, and that it gives us the second chance of restarting life the right way without mistakes. He really was a role model, teaching me not to learn from other bad wrongdoings done by others, ...h[is] phrase would be, 'The time is always right to do what is right..."'

Leibowitz perceives that was what many thought of Elliot. "I will never forget when I was once so angry at an inmate that had done bad to me, by stealing my food, and I expressed my feelings of anger to him, and [Elliot] with his good heart felt with me and explained me that even though we are surrounded with evil people, we could gain by looking at them and learning what not to do."

There are letters from Mr. Leibowitz' parents and siblings noting what a support Elliot was to their son despite the harsh conditions of their confinement.

Sholem Teller came to know Elliot in visiting the MDC over the past two years. "I must say I met a great natured person which was totally the opposite of what I expected." He spoke of Elliot's remorse and the praise from other inmates with regard to Elliot's "good heart, his positiveness, how he strengthens each and everyone, even in very difficult moments. Along the time I have heard back so much great stories how Eli has helped inmates out there. Should it be with support in hard times or with sharing his food with others." Mr. Teller reflected that inmates were stunned that Elliot was in jail and that he had so much to offer the world.

Jacob Steinberg through Mr. Teller began a correspondence with Mr. Halberstam. It was Mr. Steinberg's hope to be an inspiration and support to Mr. Halberstam through his detention. In fact Mr. Steinberg found himself inspired by Mr. Halberstam. They wrote discussions about "the book of "Choves Halevoves" (Duties of the Heart), which explains how every person on this world has their chance, and should choose the good from the bad, and in the same time that it's never to[o] late, and giving up never helps, rather to fix all bad and goal for only good." Elliot would write in every letter his remorse his actions and the import to be vigilant and aware so as to learn from one's bad deeds. Mr. Steinberg believes "that

once Elliot leaves your court he will never need to be seen by a judge again, and I'm convinced that he will only do the good and help others achieve this goal too."

Letters from Family and Friends

The letter from Elliot's mother, is also poignant as any mother is when their child is at a precipice or hurt or caused another mother's child pain. She reflects on a family impacted by the Holocaust as her husband had lost his family as a child and in his anger did not know how to parent, so she was the parent for all. She knows the severity of the allegations and that Elliot is devastated by the pain he has caused. She reflects on Elliot as a dutiful and helpful child and man who was cheery and sought to be very caring. She notes he remains a very caring person who is prepared to do his best to assist, advise and comfort anyone in need.

Joseph Hirsch the patriarch of Elliot's ex-wife's family reflects on the Elliot he came to know as a "decent and honorable person and very respectful. He always had something good to say about other people and is a warm person." Mr. Hirsch, also a Holocaust survivor and reflects his understand of the consequences of that tragedy and its impact upon the homes and families of survivors He seeks the Court consideration for these aspects of Elliot as well.

I omitted stacks of family and friend letters, some are attached but there is one theme : Elliot sought to serve and care for others; he was attentive to other, concerned to the very details of their needs and stories; all are shocked at this crime by a person who always went above and beyond for people. To those he continued a correspondence with, all are impressed by the depth of his contrition, focus on fixing the past and moving forward positively in service to others.

Elliot provided Sarah a divorce and *get*, the necessary religious divorce held and controlled by the husband in Jewish law. He did not seek to delay her moving forward. He applauds her astute concern for their children in maintaining a relationship with Elliot. He regrets that his actions have deprived his children of a father and they too are effected by his actions. Sarah remains angry for the life she too could have led, if she had not married Elliot. Elliot knows by the time of his release his children will be adults; if they wish a relationship with him it will be up to them. To the extent Sarah manifested that she did not want him home with her according to some of the reportage, that would have been illogical as they are divorced and she will hopefully find a man to love and value her in the way she should be loved and valued.

Elliot understands his life, even post incarceration will be one of supervision, scrutiny and ridicule for his actions and he seeks to accept that which is deserved and to still move forward and do positively for others.

Steve Ashkinazy, L.C.S.W. visited as much as he could with Elliot at the MDC. Steve Ashkinzy is a hero for abused persons, for the LGBTQ community and for

religious men struggling with their homosexuality in a construct and community where they are not accepted. His letter details his history as a long standing and very public record as a protector of children from sexual abuse, as a pioneer in educating the LGBTQ community about these issues, and as someone who has stood up to sexual predators and reported them. He is also the Board Chair of Eshel, a national organization whose mission, for the past ten years, is to increase acceptance and inclusion of LGBTQ people within the Orthodox Jewish world. He is also the facilitator of a support group for Gay Orthodox Jewish men that has been meeting monthly since 1984. Mr. Ashkinazy is also a gay Orthodox Jewish man.

In reflecting on Elliot, his crime and the manner of its commission he explains Elliot's experience of aversion therapy and his orientation conflict within the layers of the context that we have discussed above. Mr. Ashkinazy explains "dystonic" behavior patterns. "This is described in psychiatric literature as 'referring to thoughts and behaviors (dreams, compulsions, desires, etc.) that are in conflict, or dissonant, with the needs and goals of the ego, or, further in conflict with a person's ideal self image.' In popular parlance, when people act contrary to what they say or believe, we call it hypocrisy. But, in the ego-dystonic personality, an individual is often unaware of their behavior. There is a division between their conscious and unconscious thought patterns that make it possible for them to do things of which they themselves would not approve." Elliot's situation was more complicated when he created the openly gay Joshua Davis alter ego. "And now, Elliot, who was closeted and in denial about being gay, and torturing himself to overcome those feelings, had a fictitious life as an openly gay man, in correspondence with the only other real gay person he knew. It was a disaster waiting to happen." Elliot lost control of the balance between reality and fantasy. "In the end he abused his position of authority, and he betrayed himself as well." See, Exhibit 2.

It is Mr. Ashkinazy's professional evaluation that Elliot "is neither a pedophile nor a sexual predator, and that despite the crime to which he has confessed, and for which he feels deep remorse, Mr. Halberstam need never be suspected of ever repeating such behavior again, nor of presenting any danger to society, as that would be very contrary to his true nature." See, Exhibit 2.

#### Sentencing Directives

It is the directive of sentencing to impose a sentence sufficient, but not greater than necessary, to comply with the purposes set forth in 18 U.S.C.3553(a) subsections 1 and 2. The point of the Pre-Sentence report, the submissions of the Government and counsel are to permit the Court to understand the individual before it and with the guidance of 18 U.S.C.3553a mete out a just sentence. The concern of counsel is how to do justice to this complex man.

The precipice at which Mr. Halberstam stands is for what punishment is just for him in this matter.

The Guidelines provide for a level 35 with acceptance of responsibility. Mr. Halberstam's criminal history category is I. The applicable Guideline range is 168-210 months imprisonment. There is a mandatory minimum of 120 months or ten years. The plea agreement had contemplated a level 33 and thus a guidelines range of 135-168 months.

It is instructive to reflect on the contemplation of sentences for persons who have previously committed crimes and who stand for sentence. "Obviously, a major reason for imposing an especially long sentence upon those who have committed prior offenses is to achieve a deterrent effect that the prior punishments failed to achieve. That reason requires an appropriate relationship between the sentence for the current offense and the sentences, particularly the times served, for the prior offenses. If, for example, a defendant twice served five or six years and thereafter committed another serious offense, a current sentence might not have an adequate deterrent effect unless it was substantial, perhaps fifteen or twenty years. Conversely, if a defendant served no time or only a few months for the prior offenses, a sentence of even three or five years for the current offense might be expected to have the requisite deterrent effect. We think the Commission's sensible recognition that a CHC may over-represent a defendant's likelihood of recidivism permits a sentencing court, in appropriate cases, to include in its individualized consideration of a section 4A1.3 departure the relationship between the punishment prescribed by a career offender CHC and the degree of punishment imposed for prior offenses. In some circumstances, a large disparity in that relationship might indicate that the career offender sentence provides a deterrent effect so in excess of what is required in light of the prior sentences and especially the time served on those sentences as to constitute a mitigating circumstance present "to a degree" not adequately considered by the Commission. See 18 U.S.C. § 3553(b)." US v. Mishoe 241 F.3d 214 (2d Cir. 2001).

Mr. Halberstam is a man who had never before committed an offense and thus this time of detention in the harsh conditions of MDC, in the midst of a period of chaos at the facility, for three years and three months has been a stunning experience. He is still well short of the mandatory minimum. He has demonstrated and achieved many of the goals of sentencing: acceptance of responsibility, contrition, he is an intelligent and reflective person and the likelihood of re-offense in conjunction with extended supervisory release and SORA registration is low; the likelihood of re-offense is low per the reviews of Doctors Krueger, McCarthy and L.C.S.W./Psychotherapist Askinazy. The history and character of Mr. Halberstam demonstrates the unique forge, which permitted this offense. He has demonstrated despite the harsh aspects of MDC that he is capable to give back positively and has been lauded for his tutoring of other detainees.

Before this Court imposes sentence it must consider the factors set forth in Title 18 U.S.C. § 3553(a). When imposing sentence under these factors, courts are instructed to impose a sentence that is "sufficient, but not greater than necessary, to comply with the purposes set forth in paragraph (2) of 18 U.S.C. 3553a:

"The court, in determining the particular sentence to be imposed, shall consider—  
(1) the nature and circumstances of the offense and the history and characteristics of the defendant;  
(2) the need for the sentence imposed—  
(A) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense;  
(B) to afford adequate deterrence to criminal conduct;  
(C) to protect the public from further crimes of the defendant; and  
(D) to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner;  
(3) the kinds of sentences available;  
(4) the kinds of sentence and the sentencing range established for—  
(A) the applicable category of offense committed by the applicable category of defendant as set forth in the guidelines—  
(i) issued by the Sentencing Commission pursuant to section 994(a)(1) of title 28, United States Code, subject to any amendments made to such guidelines by act of Congress (regardless of whether such amendments have yet to be incorporated by the Sentencing Commission into amendments issued under section 994(p) of title 28); and  
(ii) that, except as provided in section 3742(g), are in effect on the date the defendant is sentenced;

This conviction will remain a yoke that Mr. Halberstam will forever wear as scarlet letter. No matter what the sentence, subsequent to his incarceration and in addition to supervised release there will be a state Sexual Offender Registration Act (SORA) hearings and registration. Mr. Halberstam will be rated at least a level 2 offender, and will beget severe supervisory restrictions on where he may work and live in addition to the strictures of any supervisory release and for years beyond the termination of supervised release. He will have to register every year and a failure to do so would result in state felony charges. This conviction is a life sentence when contemplated in its relation to New York State requirements.

Mr. Halberstam does not fail in his acceptance of responsibility; he is stunned at his own actions and seeks to correct and make up for his harm in any way he may. He lost himself through the prism of suppressed identity, which justly will result in a prison sentence.

In contemplating criminality and looking at sentencing and the concept of deterrence we need to understand how the defendant came to the bar. Was it a desire to harm? How did an otherwise good person come to a place where he has acted over a period of time in such a manner? The only logical explanation is that which the defense has tried to explain and prays this court can see. The oppression of orientation and the desire to conform reached a breach; there was a perfect storm that permitted this situation to occur. The angst of suppression of one's sexuality; a health crisis causing one to contemplate their fleeting existence; the interface with a young person who Elliot in effect saw as himself at that very crossroad, a desire to help which burgeoned in to an

obsession and love, and the awakening of experience that was impossible. Elliot's attraction was not to a child but to what he saw was a young man, despite Elliot's actual knowledge of the young man's age, it was not the child but the fantasy of the man and that he could have a relationship, emotional and physical, with a beautiful man. The Tanner Stages, developed by James M. Tanner; the complainant on the Tanner construct appeared as a man despite his age of 16. Tanner Stages attached at Exhibit 1(C).

Homosexuality is natural it is human. Abuse is not appropriate and there is no correlation between homosexuality and sexual abuse. See also New York Times article at footnote 5. The conversation in our country has matured somewhat but that has not reached our religious sectors. It was shocking to me that even Dr. McCarthy seemed to have a bias against homosexuality per se in her discussion with Elliot of the type of pornography that he preferred, adult male/adult male. If our communities were open and people could freely express themselves these breaks would be far less common; what is in each soul and in each of their own sexuality and needs are still a mystery to science. Charles Darwin said in 1862, “[w]e do not even in the least know the final cause of sexuality. The whole subject is hidden in darkness.” Not much has changed.

I question whether despite the irrefutable wrong of the interface, its harm and the relationship of trust that was breached; would this case be viewed differently if either of the participants were female? It seems that discomfort with homosexuality plays a role in this matter. This should not be an elevator. There was a significant transgression that occurred, but we can come to understand how these events came to pass. In the parlance of deterrence this is not a case of serial predation or a focus upon adolescents but, the defense respectfully submits, one of a psychiatric divide that permitted these actions to occur.

The bible permitted slavery (i.e. Leviticus 25:44) and we thankfully evolved; and all accept that slavery was wrong. Yet homosexuality remains for the religious, an abomination.

I never imagined coming to a matter and being so stunned by the allegations and meeting the very opposite of what I imagined the person who committed the acts to be. I have become Mr. Halberstam's friend, I have come to understand how he transgressed and I wanted the Court and the injured family to understand how this man could come to a place of this transgression. Through our many discussions and as Elliot related to Dr. McCarthy, he has come to accept himself as a homosexual man. I never imagined that learning this history of this person would involve a writing of the history of Hasidism, the Baal Shem Tov, surviving the Holocaust and the concept of the Sicilian Thunderstrike as written in Mario Puzo's the Godfather. Yet, in the reality of human relations we must seek to understand one another to seek justice.

The fulcrum of our contemplation that must be addressed is the impact to the complainant. Sentencing cannot make anyone harmed whole. Sentencing as we are guided by 18 U.S.C. 3553(a) is in relations to the context of a constellation of factors which answer a multitude of individual historic, character and societal questions.

As noted in paragraph 145 of the final PSR: "Pursuant to the factors set forth in 18 U.S.C. 3553(a) and the defendant's personal characteristics, a non-guidelines sentence may be appropriate. Specifically, the defendant's lack of a criminal history, employment, and familial obligations may be variance factors to consider in the sentencing of this individual." See also Exhibit 1, pages 14-15.

Doctors Kreguer and McCarthy perceive that the total acceptance of responsibility and the desire to seek and engage in therapy are excellent prognosticators of the awareness necessary in these matters and indicators of a guard against recidivism. The testing done by Dr. Krueger concludes that Elliot is not a pedophile and is at remote risk of recidivism. Dr. McCarthy concluded that Mr. Halberstam is a low risk of recidivism.

Throughout in the years since the events and through the self flagellation for causing another harm Mr. Halberstam was consistent in perceiving that the evolution of this matter came from at first overly identifying with the victim (PSR at paragraph 97); and then creating the alter ego of Joshua Davis as a one time foil to demonstrate the victim could choose another path in life and still have religion and yet experience his homosexuality in a positive light. Then the young man was more impressed with Joshua Davis who was all Elliot aspired to be. Elliot was three people, identified with the victim, Joshua Davis – his idealized self; and Elliot his suppressed self. They collided.

In considering 3553(a)(1), "[s]urely, if ever a man is to receive credit for the good he has done, and his immediate misconduct assessed in the context of his overall life hitherto, it should be at the moment of his sentencing, when his very future hangs in the balance. This elementary principle of weighing the good with the bad, which is basic to all great religions, moral philosophies and systems of justice, was plainly part of what Congress had in mind when it directed courts to consider, as a necessary sentencing factor, "the history and characteristics of the defendant." Judge Rakoff, United States v. Adelson, 441 F. Supp. 2d 504, 514.

After an assessment of the Guidelines exposure in this matter, an assessment of the factors under 18 U.S.C. 3553(a), recognition of Mr. Halberstam's contributions to society and community in his life long physical devotion to service despite the transgressions that have brought him to the bar, we respectfully submit that the mandatory minimum sentence would be "*sufficient, but not greater than necessary*," to reflect the seriousness of the offense, promote respect for the law, provide just punishment and deter others. See, United States v. Garcia, 413 F.3d 201 (2d Cir. 2005), United States v. Crosby, 397 F.3d 103 (2d Cir. 2005).

Most respectfully,  
Stacey Richman

cc: Andrew.Beatty@usdoj.gov  
Christopher\_Paragano@nysp.uscourts.gov

## Exhibit List

1. Dr. Richard B. Kreuger, M.D. Report
  - a. Incarceration And Recidivism Among Sexual Offenders, by Kevin Nunes et. al., Law Human Behavior, 31 (3), 305-318, (2007)
  - b. Curriculum vitae of Dr. Richard B. Kreuger, M.D.
  - c. Tanner Stages
2. Steve Ashkinazy, L.C.S.W., Psychotherapist, Letter
3. a. Objections to Final PSR  
b. Objections to Initial PSR
4. Accolades at MDC
  - a. U.S. Department of Justice Federal Bureau of Prisons MDC Brooklyn Education Department Certificates Basic Course available
  - b. U.S. Department of Justice Federal Bureau of Prisons MDC Brooklyn Education Department Certificates in recognition of his *Instruction* (italics in the original)
  - c. The Aleph Institute Certificates of Completion correspondence courses
5. Letters of Recommendation
  - a. Detainees:
    - Frank Desanto, retired police sgt./detainee
    - Edgar Veytia, former attorney/detainee
    - Francis Rawls, former Philadelphia police officer/detainee
    - Avery Jack Powell/detainee
    - Brain Demont, former police officer and FDNY/detainee
    - Fernando Clarke
    - Shimon Leibowitz, released
  - b. Family/Friends
    - Abraham Leibowitz (father of Shimon Leibowitz)
    - Yentel Eckstein (sister of Shimon Leibowitz)
    - Rachel Lebiowitz (mother of Shimon Leibowitz)
    - Sholem Teller
    - Jacob Steinberg
    - Renee Rivka Halberstam (Elliot's mother)
    - Joseph Hirsch
    - Isreal Ekstein (brother in law of Shimon Leibowitz)
    - Sheldon Halberstam (Elliot's brother)
    - Mimi Halberstam (Elliot's sister in law)
    - Jason Halberstam (Elliot's eldest brother)
    - Catherine Edwards
6. Articles Re: MDC
  - Federal Judge Appalled by 'Third World' Brooklyn Prison
  - Brooklyn Prison Isn't Fit for 'Civilized Country,' Attorney Says
  - Class Action Suit Takes Aim At Brooklyn Federal Jail For Its Alleged Dirty Conditions and Negligent Staff

- A Correction Officer's Convictions Signals Deeper Troubles at Brooklyn's Federal Jail
  - Conditions At Sunset Park MDC " A Humanitarian Crisis," Lawsuit Alleges
  - Brooklyn Federal Jail Had Heat Failures Weeks Before Crisis, Employees Say
  - The Intercept

7. "Branded For Life By the Modern Scarlet Letters, Do Convicted Sex Offenders Have Rights..," By John Rhodes and Daniel Donovan, The Champion, May 2014, ([www.NACDL.Org](http://www.NACDL.Org)). Sex Offenders Probation Conditions to Discuss NACDL Article

8. Letters to the Government

- a. November 15, 2017 (this is contained in the body of the memorandum it does not have to be re read)
- b. May 22, 2018
- c. November 18, 2018 to U.S. Probation